

REMARKS

The application has been amended and is believed to be in condition for allowance.

The Official action objected to the drawings, pointing to features of the invention recited in claim 8.

Claims 8 and 9 have been amended.

In view of the amendments, the drawing objection is moot. Withdrawal of the drawing objection is solicited.

Claims 1-11 were rejected as anticipated by §102(e) by TETSUJI JP 2004-158684.

As TETSUJI is not prior art to the present invention, the rejection should be withdrawn.

The present application is a national Stage of a PCT application, i.e., PCT/NZ03/00274 filed on December 12, 2003. This application being the national stage of a PCT is entitled to the PCT filing date of December 12, 2003 without more.

TETSUJI publication date is June 3, 2004.

The application's PCT filing date of December 12, 2003 is prior to the publication date of TETSUJI of June 3, 2004.

Thus, TETSUJI is not prior art and the rejection should be withdrawn.

Additionally, note that the PCT claims priority to a New Zealand application filed December 20, 2002; however, as noted above, it is not necessary to rely on that date.

The rejection is also improper under §102(e) apart from the respective dates.

Below find a copy of the relevant part of §102.

**35 U.S.C. 102 Conditions for patentability; novelty and loss of right to patent.**

A person shall be entitled to a patent unless —

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or

(f) he did not himself invent the subject matter

Note that §102(e) pertains to the invention being described in an application ... filed in the United States ... TETSUJI is not "filed in the United States". Thus, §102(e) does not apply.

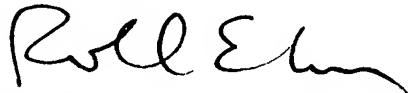
Withdrawal of the rejection and allowance of the claims  
are respectfully requested.

Should there be any matters that need to be resolved in  
the present application, the Examiner is respectfully requested  
to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this,  
concurrent, and future replies, to charge payment or credit any  
overpayment to Deposit Account No. 25-0120 for any additional  
fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



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